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April 5, 2012

Hon. Brian M. Cogan
United States Courthouse
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: United States v. Joel Cacace
Ind. 08 CR. 240 (BMC)

Dear Judge Cogan:

Susan Kellman, Jane Simkin Smith, and I are the assigned attorneys for Mr. Cacace. I write with Mr. Cacace's consent, seeking an adjournment of Mr. Cacace's trial which is presently scheduled for October 22, 2012. I make this request because the date set for Mr. Cacace's capital trial conflicts with another capital trial, United States v. Ronell Wilson, 04 Cr. 1016(NGG), which is an older indictment. That case is scheduled to begin before Hon. Nicholas G. Garaufis on September 17, 2012. I seek a control date in November, 2012, at a time convenient to the Court and parties to evaluate the progress of Mr. Wilson's case and, if possible, select a date for Mr. Cacace's trial. I write now because I do not want your Honor or the government to clear your calendars for a period when this case may not be tried.

On February 22, 2011 I was assigned as learned counsel to represent Ronell Wilson. Mr. Wilson's 2004 case was remanded to the trial court for retrial of the penalty phase after reversal of Mr. Wilson's death sentence by the Second Circuit. On February 2, 2012, Judge Garaufis ordered a hearing pursuant to Atkins v. Virginia, 536 U.S. 304(2002) to begin September 17, 2012, to be followed by trial. It is anticipated that the hearing will take approximately one week and that briefing will take approximately one additional month. If Judge Garaufis finds

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by a preponderance of the evidence that Mr. Wilson suffers from mental retardation and therefore cannot be executed the case will be concluded. If, however, he denies the Atkins motion, jury selection is expected to begin in November and the case is expected to be completed in February. I therefore seek an adjournment to a control date convenient to the Court in November to await the outcome of Mr. Wilson's Atkins hearing at which time an appropriate trial date can be selected.

If you have any questions regarding this application please contact my office.

Respectfully submitted


David Stern